THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE M.VENKATESWARA REDDY

Writ Petition Nos. 1848 of 2006 and 5261 of 2006

COMMON ORDER: (per Sri J. Chelameswar,J)

Aggrieved by the order made in O.A. No.5824 of 2005, dated 25.1.2006 of the Tribunal, the unsuccessful applicant therein has preferred Writ Petition No. 1848 of 2006.

Petitioner and the 4th respondent were working as Secondary Grade Teachers in a Primary School (Urdu Medium) run by the Municipal Corporation of Cuddapah (Respondent No.1 herein).

It appears a large number of posts of teachers and Head Masters were created pursuant a scheme of the Government of India to handle the problem of low literacy among the female children in various parts of the country. In the State of Andhra Pradesh, 10,647 posts of Head Masters were created pursuant to the said scheme and those posts were required to be filled up based on the seniority of the Secondary Grade Teachers in the District. The Government of Andhra Pradesh, in G.O. Ms. No.400, dated 5.12.1997, Education (Prog-I)Department stipulated "that the District Educational Officer shall fill up those posts by promotion from amongst the senior most S.G.B.T. Teachers working in the Primary Schools".

Subsequently, the Government of Andhra Pradesh issued Andhra Pradesh School Educational Subordinate Service Rules in G.O. Ms. No. 538, which were notified on 20.11.1998. These rules purported to cover all the teachers employed by the State of Andhra Pradesh and also the teachers employed by various Local Bodies like Municipality, Zilla Parishads etc. The said rules, inter alia, provide for

the qualifications for the post of Head Master in a Primary School. Under Rule 5 of the said Rules, the qualifications were :

"A pass in Intermediate examination along with Teacher Training Certificate."

However, by another G.O. Ms. No. 63, dated 17.5.2000, a proviso was added to the above mentioned Rule 5 granting relaxation of the qualifications mentioned above on condition that the senior most Secondary Grade Teacher who is promoted is required to secure the qualification within a period of three years. Subsequently, by another G.O. Ms. No.49, dated 14.5.2002, the above mentioned proviso was deleted.

The 4th respondent herein was promoted on 11.7.2002 as Headmistress though she did not have the requisite qualification prescribed under Rule 5 of the said G.O. Ms. No.538. It is worthwhile to mention here that by 11.7.2002, the G.O. Ms. No.63, by which the proviso to Rule 5 was introduced, also came to be deleted. In substance, there could not have been a promotion in favour of the 4th respondent on 11.7.2002, if one were to go strictly by the principles laid down in G.O. Ms. No. 538. Along with the 4th respondent, two other people were reverted by orders dated 30.10.2002 on the ground that their promotions were illegal and in contravention of Rule 5 referred to earlier. The 4th respondent started making representations to the various higher authorities, the details of which are not necessary for the present purpose and the other two persons reverted along with the 4th respondent approached the Administrative Tribunal by filing O.A. No. 10370 of 2003. By an interim order, they were directed to be continued as Head Masters. Eventually, the said O.A. came to be allowed on the ground that the two applicants in the said O.A. though did not have the qualifications stipulated under Rule 5, as their

appointments were made during the subsistence of G.O. Ms. No. 63, by which the proviso to Rule 5 wad added, the Tribunal came to the conclusion that their reversion was unsustainable.

Thereafter, the 4th respondent approached the Tribunal by way of O.A. No. 4385 of 2004 claiming parity with the applicants in the above mentioned O.A. No.10370 of 2002. Though, strictly the case of the 4th respondent is not on par with the applicants in the abovementioned O.A., on a concession made by the learned Standing Counsel for the 1st respondent herein, the case of the 4th respondent is covered by a decision of the Tribunal in O.A. No.10370 of 2002, O.A. No. 4385 of 2004 stood allowed by order dated 4.8.2004. Consequent to the said decision, by a proceeding dated 28.9.2005, the petitioner herein came to be reverted from the post of Head Master of the Municipal Corporation Urdu Primary School run by Cuddapah Municipality and posted as Headmaster of another Upper Primary School run by the Municipal Corporation of Cuddapah. Aggrieved by the said order, petitioner approached the Administrative Tribunal by way of O.A. No. 5824 of 2006. The Tribunal dismissed the said O.A. Hence, the present writ petitions.

Learned counsel for the petitioners, Sri P. Naveen Rao, argued that the case of the 4th respondent is in no way covered by the principle laid down in O.A. No. 10370 of 2002, but on a concession made by the learned counsel for the 1st respondent therein (Corporation), the Tribunal allowed O.A. No. 4385 of 2004 of the respondent without any basis in law and therefore the order by which the petitioner is reverted is a consequential order to the above mentioned order in the O.A, is illegal and since the petitioner herein was not a party to the above mentioned O.A., the petitioner had no

knowledge of the proceedings in the above mentioned O.A. nor had an opportunity to contest the same. He, therefore, filed two writ petitions, namely Writ Petition No. 1848 of 2006 challenging the order of reversion dated 28.9.2005 and also Writ Petition No.5261 of 2006 challenging the correctness of the order in O.A. No.4385 of 2004.

On the other hand, learned counsel for the 4th respondent Sri R.V. Chalapathi submitted that the question whether the 4th respondent had the requisite qualification as prescribed under Rule 5 of G.O. Ms. No.538 or not, is irrelevant at this juncture, as the above mentioned G.O. Ms. No.538 came to be declared as unconstitutional by a judgment of the Division Bench of this Court in M. KESAVULU vs. STATE OF ANDHRA PRADESH & OTHERS ([1]). Therefore, in the absence of any stipulation in law as prescribed in G.O. Ms. No.538, the only rule regarding promotion to the Head Master is the rule of seniority as contained in G.O. Ms. No.400 referred to earlier. He further submitted that admittedly the 4th respondent is senior to the petitioner herein. This fact is not in dispute. Learned counsel, therefore, argued that irrespective of the reasons given by the Tribunal for allowing O.A. No.4385 of 2004, the conclusion that the 4th respondent was rightly promoted as Headmaster is consistent with the law in force on the subject, and, therefore, the decision of the Tribunal in O.A. No.4385 of 2004, needs no interference.

We see substantial force in the statement made by the learned counsel for the 4th respondent.

In the circumstances, Writ Petition No.5261 of 2006 is dismissed.

Coming to Writ Petition No. 1848 of 2006, since the reversion of

the petitioner is only a consequential decision by the respondents based on the decision of the Tribunal in the above mentioned O.A. No. 4385 of 2004, and in view of the admitted fact that the petitioner herein is junior to the 4th respondent, we do not see any error in the reasons given by the Tribunal for dismissing O.A. No. 5824 of 2005.

In the result, both the writ petitions are dismissed. But, in the circumstances without costs.

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(J. CHELAMESWAR,J)

Date: 27th March, 2006

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(M.VENKATESWARA REDDY,J)

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[1] 2003(6) ALD 522(DB)